

REMARKS

Thorough examination of the application is sincerely appreciated.

According to the Office Action, claims 20, 23 and 25 are rejected under 35 USC 102(e) as being anticipated by US Patent 6,094,587 (hereinafter "Armanto").

In response, the rejections are respectfully traversed as lacking sufficient factual support and failing to sustain anticipation under 35 USC 102 in accordance with the established cases and statutory law.

Further according to the Office Action, claims 21, 22, 24, 26-29, 31, 32, 34 and 35 are rejected under 35 USC 103(a) as being obvious over Armanto in view of US Patent 6,075,998 (hereinafter "Morishima").

In response, these rejections are also respectfully traversed as lacking sufficient factual support and failing to establish a *prima facie* case of obviousness in accordance with the established cases and statutory law.

Applicant's representative has carefully reviewed Armanto as relied upon in the Office Action. It is respectfully submitted that nowhere does Armanto teach or suggest Applicant's features of "a receiver operable to receive an incoming message that does not include a predetermined tone or melody" as recited in claim 20.

Namely, Armanto merely teaches a device and a method for programming a ringing tone. According to Armanto, the ringing tone is sent to a mobile station in the form of a ringing tone message that includes an identifier for identifying the message as a ring tone. During reception, the ringing tone message is identified on basis of the ring tone identifier and thereafter modified into a suitable form for a ringing tone generator and memory. Armanto further discloses that the ringing tone can be sent as characters in a short message. In Armanto, the ringing tone is sent as

note data, in which case, in reception, the note data are modified into notes that specify the ringing tone. See Armanto's col. 3, lines 1-34.

Clearly, Armanto's short message is a ringing tone. It is distinct and separate from a regular, normal message as explicitly stated in the patent. Namely, Armando's predetermined tone was previously composed by a sender and then transformed into a short message. In contrast to Armanto and contrary to the Office Action, Applicants' invention comprises an incoming message that does not include a predetermined tone or melody. This feature of the present invention is not taught or suggested by Armanto.

If the examiner still believes otherwise and maintains the rejection based on the same prior art reference, he is respectfully requested 1) to **specifically point out** – using column, line numbers and reference numerals/characters – where such a disclosure can be found in Armanto; 2) to provide a personal affidavit stating the facts within his personal knowledge; or 3) to provide an affidavit from a skilled artisan stating the same. Once again, the examiner is reminded that in the absence of providing such evidence for Applicant's review and analysis, the rejections can't be properly maintained.

Furthermore, it is respectfully submitted that Armanto fails to teach or suggest Applicants' feature of "a processor in communication with the receiver and operable to compose a melody corresponding to the incoming message" as recited in claim 20. According to Armanto's receiver, a ringing tone is not composed, but merely extracted from the short message that represents the ringing tone. In contrast to the patent and contrary the Office Action, a melody corresponding to the incoming message is composed, as recited in Applicants' claim 20. Emphasis added. Applicants' incoming message is not a melody, but is used to compose a melody. This feature distinguishes the present invention over the prior art of record.

According to the binding case law established by U.S. Court of Appeals for the Federal Circuit and its predecessor Court (as interpreted in Section 2131 of the MPEP), to anticipate a claim, the reference must teach each and every element of that claim. As discussed above, the examiner failed to properly support the anticipation rejections because Armanto is woefully deficient in teaching each and every element of Applicant's claim 20. It is, therefore, respectfully submitted that independent claim 20 is not anticipated by Armanto. Withdrawal of the rejection is respectfully requested, as it cannot be sustained legally.

Independent claims 23 and 25 contain similar limitations to claim 20, whereby analysis of those claims is analogous to claim 20, as presented hereinabove. To avoid repetition, claims 23 and 25 will not be discussed in detail with the understanding that they are patentable at least for the same reasons as claim 20. Applicants, therefore, respectfully request withdrawal of the rejection and allowance of claims 23 and 25.

Morishima is applied with Armanto to the obviousness rejection of claims 21, 22, 24, 26-29, 31, 32, 34 and 35. However, Morishima is not relied upon to overcome the deficiencies with respect to the rejection of the independent claims, as discussed above. Accordingly, the rejection of claims 21, 22, 24, 26-29, 31, 32, 34 and 35 must be withdrawn.

In view of the above, it is respectfully submitted that Armanto and Morishima, whether alone or in combination, do not anticipate or render obvious the present invention as recited in claims 20-35.

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

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